



Policy Statement 2009-01

Tribal-State Tax Issues

Federal recognition of Native American tribes as dependent sovereign nations is deeply rooted in our Nation's history. The U.S. Supreme Court has often reiterated that central to state sovereignty is the authority to tax and concomitant control over its government fiscal affairs. As sovereign nations, it follows that the tribal government's power to tax is just as much an inherent attribute of their sovereignty as it is to the States.

In the past three decades, tribal enterprises all over the United States have grown significantly, and serve Native Americans and non-Native Americans alike. The growth of tribal economies has sometimes resulted in jurisdictional disputes regarding the proper taxing authority as between tribal and state governments. Attempts to resolve these disputes through the federal courts have failed to provide a clear, coherent framework to guide Tribes, States and taxpayers in cases not specifically addressed by a decision. State taxing authority may depend on whether the business activity the state seeks to tax takes place on Native American lands or off, whether the activity is conducted by a tribal or non-tribal entity, the nature of the activity itself, the provisions of specific treaties, and whether applicable federal statutes can be read as permitting or prohibiting state tax jurisdiction.

Where such disputes have arisen, many Tribes and States have successfully resolved these issues through tribal-state agreements and other arrangements. These agreements can take many forms, including but not limited to revenue-sharing and tax coordination agreements to establish a single, coherent tax framework on reservations. These agreements can also encourage economic development on reservations to the benefit of the citizens of Tribes and States alike. The success of these agreements between Tribes and States over the years underscores the vital interests all parties have in maintaining the validity and vitality of the tax agreement negotiation process.

Therefore, the Multistate Tax Commission encourages Tribes and States to resolve tribal-state tax issues through negotiated agreements, rather than through the courts. If requested, the Commission is ready to work with tribal leaders and state tax officials to initiate and foster expanded dialogues between Tribes and States with the aim of resolving tribal-state tax issues. Although the Commission is not seeking federal legislation in this area, the Commission

recommends that if any such federal legislation develops, it be sensitive and supportive of tribal and state efforts to resolve long-standing tax issues.

This Statement shall expire at the Annual Business Meeting of the Multistate Tax Commission in 2019.